

REMARKS

Status of Claims:

Claims 1-9 are present for examination.

Prior Art Rejection:

Claims 1-9 stand rejected under 35 U.S.C. 103 as obvious over Pasternak in view of Evans.

The examiner's rejection is respectfully traversed.

Applicant's claim 1 recites:

1. (Currently Amended) A point-to-multipoint wireless access system comprising a wireless base station, a plurality of wireless subscriber's terminals, a plurality of down-link channels for transmitting data from said wireless base station to respective said wireless subscriber's terminals, and a plurality of up-link channels for transmitting data from respective said wireless subscriber's terminal to said wireless base station, wherein said down-link channels use a first wireless band and said up-link channels use a second wireless band, **different from said first wireless band and** wherein said first wireless band is one of 26-GHz, 28-GHz, 38-GHz, 42-GHz 5.3 GHz and 60 GHz, and said second wireless band is one of 2.4-GHz ISM, 5-GHz and an optical frequency band.

The examiner already appreciates that Pasternak fails to disclose the specific frequency ranges recited and that indeed, the 7 MHz second wireless band taught in Pasternak is a low frequency band suitable for low data rate transmissions. In contrast, applicant's second or uplink wireless band is of a much higher frequency suitable for large data rate transmissions and is recited to be one of 2.4 GHz, 5 GHz or in the optical band.

In the "Response to Arguments" section of the office action (page 4) the examiner takes the position that the sentence in the abstract of Evans teaches two different frequencies, one for the uplink and one for the downlink. The sentence reads:

A point-to-multipoint star configured terrestrial radio communication system having at least one base station transmitting to and receiving RF communication signals from a plurality of associated subscriber stations in the 0.3-300 GigaHertz (GHz) range. (Evans: Abstract, lines 1-5).

As may be seen from the above, Evans only generally teaches a frequency range for transmission and reception. A general disclosure which is unclear or unspecified as to its detailed application should not be used as a teaching for the more detailed application. *See, e.g., In re Eli Lilly & Co.*, 902 F.2d 943, 945 (Fed. Cir. 1990) (defining an obvious-to-try situation where “a general disclosure may pique the scientist’s curiosity . . . but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued”); *In re O’Farrell*, 853 F.2d 894, 903 (Fed. Cir. 1988) (“[D]efining an obvious-to-try situation as one where prior art gives ‘only general guidance as to the particular form of the claimed invention or how to achieve it.’”).

In support of the examiner’s position, the examiner cites *In re Reven*, 156 U.S.P.Q. 679 (C.C.P.A. 1968). In *Reven*, the prior art disclosed particular ranges of particle diameters and molar ratios that were broader than and enveloped the ranges claimed by applicant. *Id.* at 681. In affirming the rejection under 35 U.S.C. § 103, the Court of Customs and Patent Appeals stated that “absent a showing to the contrary, discovering particular ranges within a range disclosed by the prior art would be within the skill of the art.” *Id.* In contrast, Applicants do not claim a range of frequencies within the range of 0.3 – 300 GHz disclosed by the prior art. Rather, Applicants claim a single transmission frequency which is **different** from the single reception frequency. Evans fails to suggest that the transmission and reception must occur at **different** frequencies. A person skilled in the art reading the single disclosure in the cited prior art would presumably not be directed to use **different frequencies** for the transmission and reception of signals. Rather, a person skilled in the art would presumably understand the disclosure in Evans to mean that a **the same frequency** within the disclosed range is used for **both transmission and reception**.

As pointed out in the response to the prior office action, Evans is concerned with a system of reducing frequency uncertainty, drift or error in the RF transmissions from each of

the subscriber stations, and Evans only generally mentions that the frequency used in the system is in the 0.3-300 GHz range. Evans does not hint that two separate bands are to be used, one for the uplink and another distinct band for the downlink. The general statement, without more, that a wide frequency band range may be used in the system does not teach applicant's specific limitation of using two separate frequency bands for the uplink and downlink respectively and does not teach applicant's specifically recited high frequency ranges in the uplink combined with the specifically recited frequency ranges used in applicant's downlink. See *Eli Lilly* and *O'Farrell supra*.

Furthermore, there is nothing in Evans to indicate any motivation to combine the teaching therein with the teachings of Pasternak. Moreover, there is nothing in Pasternak to indicate any motivation to use a higher frequency band in the uplink channel even given the broad frequency statement set forth in Evans. Indeed, Pasternak teaches that one should use the low cost subscriber terminals that will NOT have to transmit and receive at high speeds. (See column 5, lines 64-67). Thus, even assuming *arguendo*, that Evans teaches the use of different frequencies for the uplink and downlink transmissions, the combined references still do not make out a *prima facie* case of obviousness under the provisions of 35 U.S.C. § 103 since there is not motivation within the references themselves to combine the references in a manner to make obvious applicant's claims.

Applicant also points out that Pasternak teaches a point-to-multipoint microwave ATM network, which is unrelated to the present invention. Further, Evans teaches a subscriber terminal frequency control system to reduce the frequency uncertainty of the transmissions from the subscribers to the base station, which is unrelated to the present invention.

While applicant's claim 1 appears to have been properly interpreted by the examiner, applicant has amended claim 1 to emphasize the main point argued above, which is already implicit in applicant's claim, namely that the first and second bands (downlink and uplink) are **different** from one another. This addition to claim 1 is certainly NOT a new issue and indeed, as indicated above, the claim already implicitly requires that these bands be different and the examiner has already interpreted the claims as including such a limitation.

In view of the comments above it is submitted that the PTO has not made out a *prima facie* case of obviousness under the provisions of 35 U.S.C. 103 using the combined teachings of Pasternak and Evans.

Conclusions:

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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